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SUBJECT: PARLIAMENT ELECTS SPEAKER--A GOOD DAY FOR KENYA

SUMMARY

11. On January 15 Kenya's Tenth Parliament sat for its first session. In a boisterous but mostly civil session, Parliament elected the Orange Democratic Movement's (ODM) Kenneth Marende as Speaker. ODM's candidate for Deputy Speaker was also elected, again beating a PNU candidate. This event has the potential to change the political dynamics in Kenya. Going into the session there was a strong presumption that PNU would buy support of ODM MPs elect, potentially further embittering ODM supporters. That ODM took the top two positions in the parliament is a great boost to its political fortunes and gives it leverage over PNU as Kenya seeks to break its political stalemate. After his election, Speaker Marende stated that PNU would need to consider a coalition government if it wanted to accomplish its legislative agenda. Marende's election - and his impressive performance on several tricky points of order, where he (rightly) ruled against his ODM colleagues - is a positive step and is likely to encourage dialog between the two sides that would involve powersharing, a joint legislative agenda for institutional reform, and mutual efforts to stop the violence afflicting Kenya. We will continue to push for such a solution. Importantly, Kenyan media pressured the government into allowing live broadcast of the session, somewhat reducing tensions among the public which closely followed the highly-anticipated proceedings.
END SUMMARY

12. The PNU faction entered the chamber early and sat on the government's side of the hall, neutralizing ODM's threat to assume the government's side in protest of the presidential election results. ODM MPs attended the session despite contesting the legitimacy of President Kibaki's election, arguing that it could not allow PNU to gain leadership of parliament by default. When President Kibaki entered the chamber, ODM broke with tradition and refused to stand in recognition of his status. When Raila Odinga made his entrance, ODM MPs rose, stomped their feet, and chanted, "the People's President". This was the first time that Kibaki and Raila Odinga were in the same room, although each ignored the other's presence. During the marathon session, President Kibaki sat impassively, though he appeared hale and firm afoot.

13. The first order of business was electing the Speaker. To

be elected as Speaker on the first or second ballot, a candidate needs a two-thirds majority (of the total number of seats: 222, even though only 207 members have been elected and the 12 nominated MPs have not yet been named). If no candidate obtains the required majority on the first two ballots, the top two vote-getters proceed to a third ballot, after which a Speaker may be elected with a simple majority. Four candidates completed the necessary paperwork to stand for Speaker, but there were only two serious candidates: the PNU-sponsored incumbent Speaker Francis Kaparo and ODM's MP-elect Peter Marende. With the balance of power within parliament so tightly drawn (analysis of parliamentary election results in septel), the race was expected to be close and no one expected an outcome until the third ballot. There was a presumption that PNU would attempt to buy some ODM MPs to re-elect Kaparo, further alienating ODM supporters, but this apparently did not happen.

¶4. When voting began, ODM MPs contested the Clerk's interpretation of the Standing Orders (rules of procedure) to require a secret ballot by showing their completed ballot papers to their colleagues before placing it in the ballot box. PNU objected and an hour long debate on secret ballots ensued. Ultimately Attorney General Amos Wako's interpretation that Commonwealth parliamentary practice is to elect a Speaker by secret ballot broke the deadlock. Having made its point, ODM withdrew its objection and voting was restarted.

¶5. As expected, no candidate received the necessary two-thirds majority on the first or second ballot, which showed support for Marende and Kaparo nearly even. On the first ballot Marende polled 104, Kaparo 99. On the second ballot Marende polled 104 to Kaparo's 102. On the third and decisive ballot, Marende polled 105 votes to Kaparo's 101, with one invalid vote. When the Clerk announced Marende's election, there was elation, cheers, and a round of backslapping on the ODM side. The announcement also palpably reduced tensions in the hall.

¶6. Marende was sworn in immediately and presided over the rest of the session. Having taken six hours to elect the Speaker, the MPs were anxious to conclude the session. Thus, the election of the Deputy Speaker proceeded relatively quickly, with the ODM candidate Farah Maalim defeating PNU's Gitobu Imanyara. As he was preparing to preside over the swearing of the MPs' oath of office, ODM objected to the order of the oath (which would have President Kibaki take the oath first) and the form of the oath, which requires each MP to swear allegiance to the President (although not by name). ODM argued that, under the Constitution, sovereignty lies in the people not the president and called the oath in this form unconstitutional. Marende showed himself a quick study. After furious arguments on both sides, he ruled that he would swear Kibaki in first, as MP from Othaya, following the order on the list prepared by the Clerk. On the second point, he decided that the oath in its current form is contained in an Act of Parliament and he was bound to administer it as currently written. He advised Parliament that if they wished to change the form of the oath, they would need to be sworn in first and then address the issue in a future session. Marende's initial rulings were made in a calm, deliberative manner. The fact that his rulings favored PNU is a good start to establishing himself as an even-handed Speaker.

COMMENT

¶7. While the post-electoral crisis is far from over, the election of Marende as speaker is a positive step that encourages dialog between the two sides. ODM now has control of Parliament and thus more leverage for dialog. The impact of the live broadcast (and transparency in government) on a wary Kenyan public should not be underestimated. Marende's election will present an opportunity for institutional reform, which we will pursue to strengthen Parliament as an effective counterweight to the historically dominant executive branch. END COMMENT

